IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

APPEAL FROM ORDER NO.706 OF 2004
IN
NOTICE OF MOTION NO.2180 OF 1999
IN
NOTICE OF MOTION NO.3573 OF 2001
IN
S.C. SUIT NO.2355 OF 1999

Raja Rambhai Bharwad ... Appellant

V/s.

Kamaluddin Nurruddin Shaikh & Anr. ... Respondents

Mr.Girishkumar V. Pandya for Appellant
Ms.Ashwini Rupji for Respondent No.1
Mr.A.s. Chandurwala i/b M/s.Desai & Diwanji for Respondent No.2

CORAM: **SMT.NISHITA MHATRE, J.**

DATED: **NOVEMBER 29, 2004**

P.C.:

. This Appeal from Order has been filed challenging the order dismissing two Notices of Motion being Nos.2180 of 1999 and 3563 of 2001. According to the appellant, he is a deemed tenant because the property which is in his possession is being cultivated by him for the last 30 years. There is a dispute between the parties regarding the ownership of the property. It appears that one Haji Ali Mohammed Haji Cassum Agboatwala, was the owner of vast tracts of land, including the one of which the appellant claims to be a

tenant. The Court Receiver was appointed in 1950 in suit No.3415 of 1947 which is the suit filed by the widow of the deceased Haji Ali Mohammed Haji Cassum Agboatwala for the administration of his estate. According to the defendants, there is a dispute regarding 143 acres of land between defendant Nos.1 and 2 which the appellant claims to be cultivating.

2. The trial Court has considered all the pleadings and the issues raised by the appellant. It was obviously necessary for the Court Receiver to have been joined as a party to the suit. The trial Court cannot be faulted for arriving at a conclusion that the appellant had failed to establish possession of the suit lands especially since the Court Receiver has taken possession of the suit lands some time in 1950, immediately after he was appointed.

3. In view of this, Appeal from Order is dismissed.

4. As the Appeal from Order is being dismissed, nothing survives in Civil Application No.944 of 2004 and the same is dismissed accordingly.

5. Certified copy expedited.